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Human rights and mass exoduses

Report of the Secretary-General

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I. Introduction

1. At its fifty-second session, the General Assembly adopted resolution 52/132 entitled "Human rights and mass exoduses", in which the Assembly, conscious of the fact that mass exoduses of populations are caused by multiple and complex factors, including human rights violations, strongly deplored ethnic and other forms of intolerance and urged States to take all necessary steps to ensure respect for human rights, especially the rights of persons belonging to minorities.

2. The Assembly made special note of the important capabilities of the human rights machinery of the United Nations, including the mechanisms of the Commission on Human Rights and the human rights treaty bodies, for addressing human rights violations which cause movements of refugees and displaced persons or prevent durable solutions to their plight. The Assembly encouraged the further development and coordination of these mechanisms at both the international and regional levels, with priority given to the systematization of early warning information collection.

3. Because human rights violations occur in combination with other factors — political, ethnic and economic conflicts, famine, insecurity, violence, poverty and environmental degradation — the Assembly also recognized that comprehensive approaches, in particular early warning, require an intersectoral and multidisciplinary approach to enable a coherent response, particularly at the international and regional levels. The Assembly welcomed the cooperation between the United Nations High Commissioner for Human Rights, the Office of the United Nations High Commissioner for Refugees, the United Nations Development Programme and other relevant United Nations entities to ensure effective coordination of activities within their mandates and expertise.

4. Distressed by the widespread violation of the principle of non-refoulement and of the rights of refugees and recalling that asylum applicants should have access to fair and expeditious status-determination procedures, the Assembly encouraged States that had not already done so to consider acceding to the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and to other relevant refugee instruments, as applicable, and to relevant international human rights instruments. The Assembly called upon States to ensure effective protection of refugees by, *inter alia*, respecting the principle of non-refoulement, which is not subject to derogation, and encouraged them to provide information to the Office of the United Nations High Commissioner for Refugees concerning the condition of refugees and implementation of the Convention and of law, regulations and decrees which are, or may hereafter be, in force relating to refugees.

5. The Assembly urged the Secretary-General to give high priority to and to allocate the necessary resources within the regular budget of the United Nations for the consolidation and strengthening of emergency preparedness and response mechanisms, including early warning activities in the humanitarian area, for the purpose of ensuring, *inter alia*, that effective action is taken to identify all human rights abuses which contribute to mass outflows of persons.

6. Finally, the Assembly requested the Secretary-General to prepare and submit to the General Assembly at its fifty-fourth session a report on the implementation of the resolution as it pertains to all aspects of human rights and mass exoduses, including detailed information on the programmatic, institutional, administrative, financial and management efforts instituted to enhance the capacity of the United Nations to avert new flows of refugees and to tackle the root causes of such flows.

II. The intersection of human rights and mass exoduses

7. Human rights and mass exodus issues converge in several areas, each requiring attention: human rights violations as causes of displacement; arbitrary displacement as a human rights violation; protection of the human rights of refugees and internally displaced persons; and protection of the human rights of those providing humanitarian assistance, especially in conflict situations.

8. At the fifty-fifth session of the United Nations Commission on Human Rights, the United Nations High Commissioner for Refugees noted that "human rights violations, especially in situations of conflict — and even more so, in situations of internal conflict, often pitch communities against each other, trigger senseless violence and result in massive displacement of civilians". Recent crises in Kosovo, Sierra Leone and Ethiopia/Eritrea demonstrate the point.

9. In the case of Kosovo, ethnic Albanian refugees reported fleeing because of various forms of ill-treatment at the hands of Serbian paramilitary and police as well as Yugoslav army soldiers. Forms of ill-treatment included beatings with fists and rifle butts, cruel treatment, rape and other forms of sexual assault, mutilation, shooting, threats of violence and destruction of homes and property.

Witnessing summary executions and disappearances prompted flight as well. Refugees also reported shortages and denial of access to food as a reason compelling them to leave. The return of ethnic Albanian refugees beginning in mid-June has been followed by another mass exodus from Kosovo, this time of ethnic Serbs as well as Roma. Targets of grave violations of human rights, including kidnapping, murder, physical abuse and violent appropriation of property, they have been displaced in large numbers: by early August over 150,000 of Kosovo's estimated 200,000 Serbs had fled.

10. The United Nations Observer Mission in Sierra Leone reported horrifying violations of human rights and international humanitarian law, including the wilful killing and torture or inhuman treatment of persons taking no active part in the hostilities. Rebels fighting a democratically elected Government deliberately targeted women and children with close-range gunfire, rape, mutilation and other sexual violence. Harassment and detention of men and boys and forced recruitment of children have been documented as well.

11. The conflict between Ethiopia and Eritrea has been characterized by mass exoduses and, particularly, expulsions. Mass deportations of Eritreans from Ethiopia and, in the reverse scenario, of Ethiopians from Eritrea are reported to have forced several tens of thousands of people across the border.

12. Arbitrary forced displacement is itself a human rights violation. Forced relocation to alter the ethnic, religious and racial composition of particular areas is prohibited by international human rights law. The absolute prohibition applies to ethnic cleansing, apartheid and forcible displacement used as a collective punishment.

13. Although protection against other forms of displacement is not absolute, States violate their obligations if they displace persons arbitrarily, that is, without compelling reasons strictly required to protect national security, public order, public health or similar public interests. As a general rule, warring parties are prohibited from forcing civilians to move unless they can demonstrate that the security of the affected population or imperative military reasons so demand. However, erosion of respect for humanitarian norms has led to an increase in arbitrary displacements. As noted in my report on protection for humanitarian assistance to refugees and others in conflict situations (S/1998/883), many conflict situations have been rendered particularly violent because of the involvement of irregular armed groups, militia, foreign mercenaries, child soldiers, criminals and other disparate groups with little knowledge or respect for the rules of international law.

14. The Commission on Human Rights, in resolution 1999/47 adopted at its fifty-fifth session, deplored practices of forced displacement, in particular ethnic cleansing, and the negative impact they constitute for the enjoyment of fundamental human rights by large groups of populations. The Subcommission on the Promotion and Protection of Human Rights (previously the Subcommission on Prevention of Discrimination and Protection of Minorities) recognized, in resolution 1998/27, that practices of forcible exile, mass expulsion and deportation, forced population transfer, forcible population exchange, unlawful evacuation, eviction and forcible relocations, ethnic cleansing and other forms of forcible displacement of populations within a country or across borders not only deprive the affected populations of their rights to freedom of movement but also threaten the peace and security of States.

15. Respect for human rights is essential not only in preventing mass exodus but also in protecting those who become displaced. The United Nations High Commissioner for Refugees, in her statement to the Commission on Human Rights in March 1999, emphasized that "internationally agreed rights represent a powerful framework within which to address the needs of uprooted people". The 1951 Convention relating to the Status of Refugees and its 1967 Protocol place clear legal responsibilities on States to protect refugees. However, as access to asylum is often denied, in some cases by restrictive asylum practices, promotion of the tenets of the refugee convention remains a principal activity of the Office of the United Nations High Commissioner for Refugees (UNHCR).

16. As human rights violations are the fundamental cause of refugee movements, human rights instruments and mechanisms are the precepts on which the rights of refugees, displaced persons and returnees are protected. The rights affirmed in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, for example, support the basic purpose of humanitarian assistance, whether offered during displacement or upon return and reintegration, which is to ensure that people can enjoy physical safety and that they can sustain themselves in dignity. In support of this approach, UNHCR has published training manuals for staff on human rights and undertaken extensive training in the area of human rights both within and outside the organization. Staff are encouraged to use international human rights law in their efforts to protect refugees and displaced persons.

17. Ensuring access to humanitarian assistance is key to the protection of human rights in many situations of forced displacement. In a number of situations of mass exodus, humanitarian access has been hampered by general insecurity arising from conflict, an inability or unwillingness on the part of States and non-State actors to allow such access and, in some cases, deliberate attempts to obstruct humanitarian assistance. Problems have been exacerbated by the presence of armed combatants and criminal elements in camps housing refugees and displaced persons and in the surrounding areas.

18. Under international law, refugees and other displaced persons have a right to international protection and assistance if this is not available from their national authorities. If this right is to have any meaning for the intended beneficiaries, then the providers of international protection and assistance must have effective access to them. As described in my report on protection of humanitarian assistance to refugees and others in conflict situations, there has been a disturbing increase in the number and scale of direct attacks or use of force against personnel of United Nations and other humanitarian organizations. These attacks stem from a desire by parties to conflicts to disrupt humanitarian operations, a desire to remove actual or potential witnesses to human rights violations and other violations of international law, and a general mistrust and suspicion regarding the motives and intentions of humanitarian organizations. The dangers faced by humanitarian personnel, and the related violations of their human rights, has been exacerbated by the same armed combatants who endanger the refugees and the displaced.

19. The urgency of these issues is reflected in the attention given to them by the Security Council. Meeting in May 1997, the Security Council discussed the protection of humanitarian assistance to refugees and others in conflict situations and encouraged the Secretary-General to present a report on ways to improve it. The resulting September 1998 report stressed the importance of the Security Council being kept regularly informed of the humanitarian situation in cases of potential or actual conflict so that it has a comprehensive picture of the problem. The Security Council, in resolution 1208 (1998) of 19 November 1998 adopted following consideration of the report, affirmed the primary responsibility of States hosting refugees to ensure the security and civilian and humanitarian character of refugee camps and settlements in accordance with international refugee, human rights and humanitarian law. The Security Council also noted that a range of measures by the international community are needed to share the burden borne by African States hosting refugees and to support their efforts, including in the areas of law enforcement, disarmament of armed elements, curtailment of the flow of arms in refugee camps and settlements, separation of refugees from other persons who do not qualify for international protection afforded refugees or otherwise do not require international protection, and demobilization and reintegration of former combatants.

III. Institutional and programmatic initiatives to enhance prevention of mass exoduses

20. As my report on human rights and mass exoduses to the fifty-second session of the General Assembly (A/52/494) concluded, many of the activities of the United Nations are relevant to the tasks of preventing, preparing for and responding to mass exoduses. The wide range of activities that promote general welfare and social stability, including efforts to promote and consolidate peace, democracy and human rights, economic and social development and the protection of the environment, help avert the type of crises that generate large-scale population displacement. Efforts related to potential crisis situations, where the aim is to facilitate a peaceful resolution or management of emerging conflicts before they escalate into full-fledged emergencies, also help avert mass exoduses. Once a crisis has arisen, efforts to facilitate a peaceful resolution, including peacekeeping operations, peace mediation, humanitarian assistance and protection of civilians from abuse, mitigate the negative effects on populations that may otherwise flee en masse.

A. Office of the United Nations High Commissioner for Human Rights

21. The General Assembly has recognized that the human rights machinery of the United Nations plays a special role in support of all of these activities. The activities of the Office of the United Nations High Commissioner for Human Rights (OHCHR) intersect with mass exodus issues through the Office's monitoring activities and its field-level operations to promote the rights and safety of refugees and displaced persons. The Office also supports the mandates of the Representative of the Secretary-General on internally displaced persons and special rapporteurs of the Subcommission on such related issues as population transfers, freedom of movement and forced evictions. The participation since 1997 of the High Commissioner in the

four Executive Committees established under the programme of reform and in the Inter-Agency Standing Committee has helped to ensure that human rights perspectives are included in the deliberations of these forums and are integrated into the overall approach to humanitarian operations, as well as to issues of peace and security, development, and economic and social affairs.

22. United Nations human rights field presences exist in numerous countries affected by mass exoduses, including Burundi, Angola, the Democratic Republic of the Congo, Georgia (Abkhazia), Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia, the former Yugoslav Republic of Macedonia, Colombia, the Gaza Strip, Cambodia and Indonesia. The field presences enable monitoring of the rights of returnees and displaced persons. They also support the ability of the country and thematic special rapporteurs, where applicable, to monitor and report on the situation of refugees and displaced persons. A manual on human rights monitoring being developed by OHCHR includes chapters on monitoring in camps of refugees and displaced persons and during the return process. OHCHR's activities in post-conflict situations seek to create an environment in which respect for human rights will help reintegrate refugees and displaced persons and prevent future mass exoduses.

23. In response to the mass exodus of ethnic Albanians from Kosovo in the spring of 1999, the United Nations High Commissioner for Human Rights deployed human rights monitors to the former Yugoslav Republic of Macedonia, Albania, and the Federal Republic of Yugoslavia (Montenegro) in support of the emergency operation in Kosovo. The objectives of this deployment were: (a) to establish a human rights presence as close as possible to the actual developments in Kosovo; (b) to interview refugees and seek impartial verification about alleged human rights violations; (c) to seek to identify patterns and trends in human rights violations; (d) to consult and help coordinate among international partners the assembling and analysis of information relating to human rights violations in Kosovo; (e) to assemble information in reports to the High Commissioner for Human Rights, the Special Rapporteur on the situation of human rights in Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia and other United Nations mechanisms, including the International Tribunal for the Former Yugoslavia; and (f) to explore opportunities for technical cooperation in the future reconstruction and security of the region.

24. Since re-establishing a presence in Kosovo in June, human rights field staff have resumed monitoring activities. Based on the information received from the field, in early August the High Commissioner for Human Rights called for urgent action on behalf of some 5,000 Kosovar Albanians reported to be detained, imprisoned or abducted in the Federal Republic of Yugoslavia. She also condemned the grave human rights violations suffered by Serbs, Roma and others, expressing deep concern over the mass exodus of 150,000 Serbs from Kosovo, who join more than half a million Serb refugees in Croatia and Bosnia and Herzegovina enduring deprivation and an uncertain future in Serbia.

25. Concerning the Ethiopia/Eritrea conflict, in the proposals for a framework agreement for the resolution of the dispute made by the Organization of African Unity (OAU), it is foreseen that human rights observers will be deployed along the border with responsibilities relating to the resettlement of displaced persons along the border and the restoration of civil administration.

26. More generally, OHCHR provides technical assistance and training to promote greater respect for human rights. These activities focus on the incorporation of international human rights standards in national laws and policies; on the building or strengthening of national institutions capable of promoting and protecting human rights and democracy under the rule of law; on the formulation of national plans of action for the promotion and protection of human rights; on human rights education and training; and on promoting a culture of human rights. Such assistance may take the form of expert advisory services, training courses, workshops and seminars, fellowships, grants, provision of information and documentation, and assessments of needs.

27. In view of the fact that preventive activities need to be undertaken by the High Commissioner in the most timely manner, the Office has made information management a high priority. An integrated human rights information network has been developed as an essential part of OHCHR's information management strategy. Specifically, the Human Rights Computerized Analysis Environment (HURICANE) information system has been established to achieve efficient information management among OHCHR staff.

28. Special rapporteurs/representatives and independent experts appointed by the Commission on Human Rights and by the Subcommission on the Promotion and Protection of Human Rights, and serviced by OHCHR, regularly provide information on human rights violations that have the potential to generate mass exoduses or to prevent their being resolved. In particular, several special rapporteurs and expert groups of the Subcommission have examined different forms and aspects of displacement, including issues related to

freedom of movement, forced evictions and population transfers.

29. The 1997 report of the Special Rapporteur of the Subcommission on human rights and population transfer (E/CN.4/Sub.2/1997/23 and Corr.1) focused on forced population exchanges, the implantation of settlers, unlawful evacuation, eviction and other types of State-induced displacement and relocation within a country or across borders. The Special Rapporteur noted that the non-realization of economic, social and cultural rights may provoke mass population movements. He recommended the establishment of a working group of the Subcommission on this question, the strengthening of regional mechanisms, and the undertaking of a more detailed study on the right to return; he also addressed the questions of restoration and reparation and the need to coordinate his work with that of the Representative of the Secretary-General on internally displaced persons (see below, section B). The Special Rapporteur also appended a "Draft declaration on population transfer and the implantation of settlers" to his report. Having considered the report, the Subcommission, in resolution 1997/29, recognized that the practices described not only deprive the affected population of their rights to freedom of movement but also threaten the peace and security of States.

30. At the same session, the Subcommission also has examined the related issue of forced evictions, particularly in the context of the right to adequate housing. The term is used to cover the coerced and involuntary removal of persons, families and groups from their homes, lands and communities, whether or not deemed legal under prevailing systems of law. An expert seminar held in June 1997 noted that forced evictions are similar to other practices resulting in forced displacement and, because they intensify social conflict, may lead to still further displacements. The seminar produced guidelines that recognize that forced evictions constitute prima facie violations of a wide range of internationally recognized human rights and can only be carried out under exceptional circumstances and in full accordance with relevant provisions of international human rights law. In resolution 1998/9, the Subcommission welcomed the report of the expert seminar (E/CN.4/Sub.2/1997/7) and the guidelines.

31. An expert member of the Subcommission presented to that body, also in 1997, a working paper on the right to freedom of movement (E/CN.4/Sub.2/1997/22). The paper defined freedom of movement as encompassing the right of everyone lawfully within the territory of a State to liberty of movement and freedom to choose his or her residence, the prohibition of arbitrary deprivation of the right to enter one's own country and respect for the principle of non-refoulement. Related issues, inasmuch as they deprive populations of these rights, include forcible exile, mass expulsion and deportation, population transfer, forcible population exchange, unlawful forcible evacuation, eviction and forcible relocation, ethnic cleansing and other forms of forcible displacement of populations within a country or across borders. In resolution 1997/29, the Subcommission welcomed the working paper and decided to convene a further expert seminar to make practical recommendations for further work on this topic. This seminar is expected to be convened in the coming year.

32. These various processes of the Subcommission thus have arrived at similar conclusions regarding the related phenomena of population transfers, forced evictions and violations of the right to freedom of movement, as involving elements of coercion as well as failures of States to provide adequate protection against violation of basic human rights. However, as result of these issues being considered under different items of the Subcommission's agenda (population transfers and refugee and migration matters are discussed under an agenda item entitled "Freedom of movement", under the sub-item "Population displacement", while forced evictions come under a separate item, on the realization of economic, social and cultural rights), different guideline-setting processes have been under way in the Subcommission with respect to population transfers and forced evictions. At the same time, moreover, the Commission has considered the Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2) developed by the Representative of the Secretary-General on internally displaced persons. Complementarity among these efforts is critical for ensuring a clear and comprehensive normative framework regarding arbitrary displacement.

B. Representative of the Secretary-General on internally displaced persons

33. OHCHR actively supports the work of the Representative of the Secretary-General on internally displaced persons. Appointed in 1992 at the request of the Commission on Human Rights, the Representative is mandated to monitor displacement problems worldwide, undertake country missions, establish dialogues with Governments, develop an international legal framework, promote effective institutional arrangements at the international and regional levels, identify preventive and protection strategies, focus attention on the needs of internally displaced women and children, and publish reports

and studies in an effort to increase international awareness of the problem.

34. Since 1992, the Representative has engaged in dialogue with Governments and human rights, humanitarian and development agencies to raise awareness of the global problem of internal displacement. He has visited 13 countries with serious problems of internal displacement, published reports on these situations, and made recommendations for improving the conditions of the displaced. His visits have often mobilized public attention at the national level to the needs of internally displaced persons and in certain cases have spurred the creation of mechanisms and institutions to deal with the problem.

35. Noting the work of the Representative in developing a legal framework, in particular the *Compilation and Analysis of Legal Norms*[1] relating to internally displaced persons and the development of the Guiding Principles on Internal Displacement, the Commission on Human Rights and the Economic and Social Council have noted with appreciation that United Nations agencies, regional and non-governmental organizations are making use of the Guiding Principles in their work and have encouraged the further dissemination and application of them. Regional organizations in Africa, the Americas and Europe have taken note of them as well and are disseminating them to their staff.

36. To support further dissemination and application of the Guiding Principles, the Inter-Agency Standing Committee (IASC) has encouraged its members to share them with their executive boards and staff and to apply them in their activities on behalf of the internally displaced. The IASC also asked its members, as well as partner agencies, to contribute examples of field programmes supporting the Guiding Principles. These examples have been compiled into a *Manual on Field Practice in Internal Displacement: Examples from UN Agencies and Partner Organizations of Field-Based Initiatives Supporting Internally Displaced Persons*. Meanwhile, the Representative commissioned a companion volume, *Handbook for Applying the Guiding Principles on Internal Displacement*, that spells out the meaning of the Guiding Principles in non-technical language to facilitate their practical application.[2] Both volumes have been reviewed by United Nations agencies and non-governmental organizations, and they will be disseminated as a package to field offices. They include practical advice on preventing forced displacement, protecting the rights of those who are displaced as well as those providing humanitarian assistance, and finding durable solutions, including return and resettlement.

37. In the past year, the Representative also has launched a series of workshops on internal displacement aimed at improving understanding of the problems confronting internally displaced persons on the ground, and of the strategies needed at the national, regional and international levels to help address their plight. More specifically, the workshops have facilitated valuable discussion on the promotion and dissemination of the Guiding Principles. The first workshop was held in Addis Ababa, in October 1998, co-sponsored by UNHCR, OAU and the Brookings Institution Project on Internal Displacement (which the Representative co-directs). The report of this workshop has been submitted to the Commission on Human Rights (E/CN.4/1999/79/Add.2). A subsequent workshop on the dissemination and implementation of the Guiding Principles was held in Bogota, Colombia, in May 1999, organized by the Brookings Institution Project in collaboration with the U.S. Committee for Refugees and a consortium of Colombian non-governmental organizations (Grupo de Apoyo a Organizaciones de Desplazados).

C. Office of the United Nations High Commissioner for Refugees

38. The Office of the United Nations High Commissioner for Refugees (UNHCR) is the organ of the international community mandated to protect and assist refugees and returnees, persons in refugee-like situations and, in some circumstances, internally displaced persons.

39. The importance given to human rights in UNHCR's work is evident in one of the recent Conclusion on international protection adopted by its Executive Committee at its forty-ninth session in 1998.[3] In its conclusion the Executive Committee, recognizing that the refugee experience is closely linked to the degree of respect by States for human rights and fundamental freedoms and the related refugee protection principles and reaffirmed the importance of educational and other programmes to combat racism, discrimination and xenophobia, to promote tolerance and respect for all persons and their human rights, to advance the rule of law and legal and judicial capacity-building, and to strengthen civil society and sustainable development. Encouraging UNHCR to strengthen further its collaboration with OHCHR and relevant human rights bodies and mechanisms, the Executive Committee noted the need to improve coordination, promote complementarity, avoid duplication of efforts and preserve the distinct character of the respective mandates.

40. The Executive Committee made special mention of the rights of refugee and displaced women, children and the elderly. Representing more than 80 per cent of the world's forcibly uprooted population, these groups often face particular human rights violations. Gender-related violence, including rape and physical mutilation, has become an all too frequent element of modern warfare. Continuing violations of the rights of refugee children include abduction with a view to forcing participation in military activities, forced family separations, sexual abuse and exploitation, acts of violence and threats to their dignity.

41. UNHCR has taken practical steps to promote respect for the rights of refugees and displaced persons. Through its "reach out" initiative, UNHCR seeks to reinvigorate support for the international protection system among Governments, non-governmental organizations, other United Nations organizations, international financial institutions, the corporate community and others. Protection issues figure prominently in the collaboration between UNHCR and NGOs within the framework of Partnership in Action. UNHCR has also produced training materials and held workshops and courses on protection of refugees and displaced persons and monitoring the rights of returnees. A field guide for NGOs on refugee protection was recently published in collaboration with NGO partners.

D. Other international organizations

42. The work of the United Nations Children's Fund (UNICEF) on behalf of displaced populations is grounded in such human rights instruments as the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women. The lives of children, who are always the most vulnerable, are at special risk and their rights are compromised in the highly volatile situations that characterize mass exoduses. UNICEF's emergency programmes reflect a commitment to addressing the particular vulnerabilities of women and girls in emergency situations, and also its belief that women constitute an essential, often untapped, force for overcoming the damages of war, conflict and disruption. UNICEF has published training material, including *Humanitarian Principles Training: A Child Rights Approach to Complex Emergencies*, to increase sensitivity to these rights issues.

43. The United Nations Development Programme (UNDP) has three key roles in reference to mass exoduses: prevention, coping and recovery. UNDP's efforts to address poverty in an equitable way aim to reduce the socio-economic disparities which give rise to situations that cause displacement. Relieving people's vulnerabilities reduces the potential for human rights abuse and renders people less subject to forced displacement. UNDP's special programme initiatives seek to attenuate circumstances that may promote flight, for example, through promoting a small arms reduction programme in Albania and by supporting preventive diplomacy in the Central African Republic. UNDP works to sustain development during crises and to rekindle development initiatives at the earliest opportunity, through joint planning and implementation with UNHCR and other agencies. However, disparate funding strategies of donors and other factors continue to foster artificial gaps in international assistance that impede a swift transition from relief to development.

44. Emphasizing that access to adequate food is a basic human right, the World Food Programme (WFP) follows a threefold strategy in situations of mass exodus. First, with respect to advance planning for potential emergencies, activities include vulnerability analysis and mapping, contingency planning, and assessment of logistical capacities and intervention options. Second, WFP has strengthened its efforts with respect to the inputs required for immediate response to large-scale population movements and other types of humanitarian emergencies. Third, emergency management has been improved, including by steps to decentralize WFP's operations through increased delegation of authority to the field.

45. The International Organization for Migration (IOM) acts with its partners in the international community to assist in meeting the operational challenges of migration, advance understanding of migration issues, encourage social and economic development through migration, and uphold the human dignity and well-being of migrants. IOM is involved in all phases of mass exoduses, providing technical and operational expertise in such areas as transportation, health, and other services for migrants. In particular, IOM's work in post-conflict societies aims to facilitate the return and reintegration of affected populations, accelerate the restoration of normalcy, avoid further mass outflow of people, empower key local authorities in the management of local resources to reconstruct the social structure, and help create an atmosphere of peace, reconciliation and trust so that national experts and professionals living outside the country can return and help in the overall reconstruction of the country. Typical projects include assistance to vulnerable returnees, including the elderly, women and children, reinsertion of demobilized combatants, registration of returnees, tracing and family reunification, migration information and referral services, and support for micro-economic development activities for affected communities.

IV. Early warning and information exchange

46. The systematic monitoring of human rights violations and other factors that cause mass exoduses and undermine the protection of refugees and displaced persons can enhance the capacity of the United Nations for taking action to prevent, prepare for and respond to humanitarian emergencies. Thus, monitoring of early warning indicators and a process to generate responses are essential elements of an effective early warning system. Interdepartmental and inter-agency consultations within the Organization have increasingly begun to devote more time and effort to analysing situations that give substantial cause for concern from political, economic, human rights, humanitarian and development perspectives. Informal country or situation review meetings assess the risk of a possible conflict and offer, where appropriate, various options for either preventive or preparedness measures to be applied, by one or more components of the United Nations system.

47. Two key information tools for improving early warning and responses are the Integrated Regional Information Networks (IRINs) and the ReliefWeb, which are separate but mutually complementary and reinforcing information units of the Office for the Coordination of Humanitarian Affairs (OCHA). These units have adopted an innovative cross-border and inter-agency approach to information gathering and dissemination while at the same time fostering greater awareness of the interlocking and regional aspects of issues and events.

48. IRIN was established in late 1995 and now has offices in Nairobi, Johannesburg and Abidjan, enabling it to provide in-depth coverage of events in sub-Saharan Africa. IRIN updates and alerts, covering a wide range of humanitarian, human rights, political, economic and social issues, are drawn from an extensive network of United Nations and other sources, ranging from Governments, international organizations, academic institutions and think-tanks in capital cities to non-governmental organizations, religious missions and private enterprise. IRIN updates and alerts routinely include information on threatened or actual displacements and return movements as well as on the protection and assistance needs of the displaced populations. IRIN reports are distributed primarily via e-mail. The estimated daily readership is 16,000. In addition, thousands of readers access IRIN via the IRIN Web site (www.reliefweb.int/irin/) launched in April 1999.

49. ReliefWeb is acknowledged as the premiere online source of information on natural disasters and complex emergencies. Its mandate is to strengthen the response capacity of the humanitarian relief community through the timely dissemination of reliable information on response, preparedness and disaster prevention by providing guaranteed access to time-critical reports, maps and financial contributions both to decision makers at Headquarters and to relief teams in the field. Information on the world's crisis points and relief operations is updated around the clock and supplied by more than 300 sources including IRINs, OCHA and other United Nations agencies, Governments, international and non-governmental organizations, scientific and academic institutions, and the media.

50. ReliefWeb is a valuable tool for users in more than 170 countries who submit up to half a million page requests for humanitarian information per month. In response to the information needs of the international community, ReliefWeb has expanded its map centre, added a humanitarian contact directory and employment vacancies section, and provides access to the financial tracking of donor contributions to United Nations consolidated appeals. ReliefWeb also acts as a portal to other humanitarian web sites by providing links in its country background section. In March 1999, IRIN and ReliefWeb were integrated when IRIN launched its presence on the Internet on the ReliefWeb site. From September 1999, a ReliefWeb-via-e-mail service will be offered to allow e-mail subscriptions to users in the field whose Internet connectivity is unreliable or unavailable.

51. As part of an overall strategy of integrating its information services, OCHA plans to bring ReliefWeb and IRIN even closer together in 1999. The move is intended to build on the success of both units while at the same time maintaining their separate identities, maximizing resources, reducing costs and improving the efficiency and usefulness of OCHA's information services to the wider humanitarian community.

52. Another information management tool related to displacement, and with which ReliefWeb will be linked, is the Global IDP Database which is to be launched in the autumn of 1999. This global information system on internally displaced persons will pool together country-specific data on the causes and patterns of contemporary situations of internal displacement, the profile of the populations affected, their protection, assistance and development needs, and national and international responses. An initiative of the IASC, the development and management of the database has been out-sourced to the Norwegian Refugee Council.

V. Strengthening coordination of responses to complex emergencies

53. Success in preventing, preparing for and responding to mass exoduses depends on a well-coordinated and integrated plan of action and the availability of the human, material and financial resources necessary to carry out the plan. Over the past few years, the United Nations has taken several major steps to improve its planning and implementation capacities in these regards.

54. The establishment of the Department of Humanitarian Affairs in 1992 and its evolution in 1997 into the Office for the Coordination of Humanitarian Affairs represented significant steps towards improved coordination of the activities necessary for effective responses to mass exoduses. OCHA is mandated to mobilize and coordinate the collective efforts of the international community, in particular those of the United Nations system, to meet in a coherent and timely manner the needs of those exposed to human suffering and material destruction in disasters and emergencies. This involves reducing vulnerability, promoting solutions to root causes and facilitating the smooth transition from relief to rehabilitation and development. Its work is organized around three areas: development of humanitarian policy; advocacy of humanitarian concerns; and coordination of humanitarian emergency responses both to complex emergencies and natural disasters.

55. OCHA serves as secretariat to the IASC which comprises not only all of the United Nations humanitarian and development agencies but also includes participation by OHCHR, the Representative of the Secretary-General on internally displaced persons, the Red Cross movement, IOM and three non-governmental agency consortia. The Under-Secretary-General for Humanitarian Affairs chairs the IASC. The secretariat function has been strengthened by combining the servicing of the IASC with the servicing of the Executive Committee on Humanitarian Affairs (ECHA), also chaired by the Under-Secretary-General. ECHA brings the Special Representative of the Secretary-General for Children and Armed Conflict, the Department of Political Affairs, the Department of Peacekeeping Operations, the Office for the Coordination of Humanitarian Affairs, the Office of the High Commissioner for Human Rights, the United Nations Development Programme, the Office of the United Nations High Commissioner for Refugees, the United Nations Relief and Works Agency for Palestine Refugees in the Near East, the United Nations Children's Fund, the World Food Programme, the Food and Agriculture Organization of the United Nations and the World Health Organization into a joint forum to provide strengthened strategic coordination on humanitarian concerns.

56. In the area of policy development, OCHA has set out a number of priorities for coordinated attention from the international community: reaching consensus on and advocating humanitarian principles; linking humanitarian and political processes; defining the relationships between humanitarian and human rights action; assistance and protection for internally displaced persons; and security of humanitarian workers. In regard to these issues, particularly as they relate to mass exodus, the appointment in 1999 of a focal point within OCHA for issues of internal displacement, to work in collaboration with the Representative of the Secretary-General, is an important step towards improved responses.

57. The IASC, after examining papers on humanitarian action and human rights in 1998, created a reference group at the working level composed of representatives of OCHA, OHCHR, UNHCR, UNICEF, the International Council of Voluntary Agencies and the International Committee of the Red Cross to discuss the interface between humanitarian assistance and protection of uprooted people. Also, in 1999 the IASC Working Group is formulating a policy paper on the protection of internally displaced persons.

58. Essential to strengthening planning and responses to mass exodus and other aspects of complex emergencies has been the continued improvement in the inter-agency consolidated appeal process (CAP). Within the CAP, United Nations agencies and other participating entities (which vary from situation to situation, but may include entities such as non-governmental organizations and other international organizations) have focused on joint planning, prioritization, and the development of a common strategy. The relatively recent participation of OHCHR in the consolidated appeal process will ensure that due attention is paid to human rights issues. Another initiative has been to maximize the simultaneous launch of as many of these appeals as possible to donors and other interested parties with the most comprehensive view of humanitarian needs and actions. Thus, in December 1998 consolidated appeals were launched for 23 countries, under the auspices of OCHA.

59. Notwithstanding these various developments in the past year, the crisis in Kosovo illustrates the challenges still to be overcome in putting into place an efficient system for responding to mass exoduses. Beginning in January 1999, United Nations agencies together with donor organizations and non-governmental organizations in Belgrade and Pristina discussed contingency plans for various outcomes of the

talks being held in Rambouillet, France. Plans in place to meet the needs of 100,000 new Kosovo refugees were quickly overwhelmed when 227,000 people fled Kosovo in the first eight days of the air campaign mounted by the North Atlantic Treaty Organization and a total of 850,000 had left before hostilities ceased. Since late March 1999, the humanitarian operation in south-eastern Europe has proved to be as politicized, difficult and complex an operation as has ever been faced by the participating United Nations humanitarian agencies. A multitude of protection, logistical and coordination problems had to be addressed in a highly charged political and security environment. While the humanitarian operation achieved its overriding objective — to ensure the security and meet the immediate life-sustaining needs of hundreds of thousands of refugees — the multiplicity of actors, including bilateral actors, compounded the problems of providing a coherent, effective humanitarian response. Many lessons have already been learned, and UNHCR has commissioned an independent evaluation, which started in early July, to ensure that all the appropriate lessons are duly recorded.

VI. Conclusions and recommendations

60. The integral linkages between human rights concerns and mass exoduses make it imperative that the human rights and humanitarian communities cooperate in finding solutions to these crises. Much progress has been made in this respect. As a measure, consider the active participation of the Office of the High Commissioner for Human Rights in the IASC and the Executive Committee for Humanitarian Affairs , the regular involvement of the United Nations High Commissioner for Refugees in sessions of the Commission on Human Rights, and the increasing cooperation between the two organizations in addressing issues of mutual concern.

61. Still more must be done, however. Many of the recommendations made in my report on protection for humanitarian assistance to refugees and others in conflict situations remain relevant:

(a) Promoting accession to international law instruments, including humanitarian law, human rights law and refugee law;

(b) Disseminating and advocating human rights and humanitarian principles to encourage compliance with prohibitions against arbitrary and forcible displacement and greater respect for the rights of those who flee;

(c) Establishing mechanisms to ensure compliance with international law in order to end the culture of impunity which currently prevails: all those who violate international law must be brought to justice, whether they are State or non-State actors, and Member States are encouraged to ratify the Statute of the International Criminal Court so that it may enter into force as soon as possible;

(d) Sharing responsibility with States which experience the greatest political, economic and social impact of mass exoduses to encourage and support their respect for human rights and humanitarian principles in their treatment of refugees and displaced persons;

(e) Improving security and access to humanitarian assistance and creating a secure environment for civilians endangered by conflict and for the delivery of aid;

(f) Encouraging Member States to ratify the 1994 Convention on the Safety of United Nations and Associated Personnel and training humanitarian personnel in security procedures; efforts should be made to extend the application of the Convention so that it adequately covers all humanitarian personnel;

(g) Ensuring that the Security Council is regularly informed of the human rights and humanitarian situation in cases of potential or actual conflict.

62. Ensuring effective coordination of all United Nations activities pertaining to human rights and mass exoduses will remain a priority, as will streamlining responses where possible. Three types of coordination and streamlining are needed. First, there is a need for the various human rights mechanisms considering forced displacement issues to coordinate their activities, particularly with regard to the setting of standards and guidelines. It is possible that some of these overlapping activities can be consolidated. Second, it is vital to have optimum coordination between the human rights and humanitarian components of United Nations operations. Cooperative strategies can help ensure that human rights violations as cause and consequence of mass exoduses are addressed and the protection of refugees and displaced persons is enhanced. Finally, coordination between the human rights and humanitarian components of United Nations operations, on the one hand, and political and military components, on the other, will help ensure sharing of information needed to assess the likelihood of mass exoduses and formulate and implement strategies to prevent, prepare for and respond to these emergencies in an effective and comprehensive manner.

Notes

[1] *Internally Displaced Persons: Compilation and Analysis of Legal Norms*. United Nations publication, Sales No. E.97.XIV.2.

[2] Both volumes are, as of the time of writing of the present report, in the process of publication, in English only.

[3] *Official Records of the General Assembly, Fifty-third Session, Supplement No. 12A* (A/53/12/Add.7), chap. III, sect. A, para. 21.

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Human rights questions: human rights situations and reports of special rapporteurs and representatives

Question of the violation of human rights and fundamental freedoms in any part of the world, with particular reference to colonial and dependent countries and territories

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the situation of human rights in the Democratic Republic of the Congo, Mr. Roberto Garretón (Chile), pursuant to Assembly resolution 53/160 and Commission on Human Rights resolution 1999/56.

Report of the Special Rapporteur on the situation of human rights in the Democratic Republic of the Congo pursuant to General Assembly resolution 53/160 and Commission on Human Rights resolution 1999/56

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I. Introduction

A. Mandate and activities

1. The Special Rapporteur on the situation of human rights in the Democratic Republic of the Congo submits his third report to the General Assembly pursuant to Assembly resolution 53/160 and Commission on Human Rights resolution 1999/56 (see annex I).[1, 2] The report covers incidents that occurred up to 7 September.

2. Two years after suspending cooperation with the Special Rapporteur, the Government of the Democratic Republic of the Congo sent him two invitations. On his first visit, from 16 to 23 February, the Special Rapporteur visited Kinshasa and Lubumbashi. On his second visit, from 27 August to 6 September, he met with President Laurent Désiré Kabila for nearly two hours and also talked with the officials listed in annex II. The Special Rapporteur wishes to stress the excellent cooperation that he received from the Kinshasa Government during his two missions, particularly from the Minister of Human Rights.

3. On both occasions, the Special Rapporteur was also received by officials of the Rassemblement congolais pour la démocratie (RCD), one of the two rebel movements in the country; he made two visits to Goma and one to Bukavu, meeting with the officials listed in annex III, who gave him a good reception.

4. In the two regions into which the conflict has divided the country, the Special Rapporteur met with representatives of various institutions, churches, non-governmental organizations, political parties and movements, which are mentioned in annexes IV and V. He also held consultations in New York (5 to 7 April), Kampala (2 September) and Geneva (7 to 10 September). On 25 May, he participated in a meeting in Brussels with the Special Rapporteur on the situation of human rights in Burundi and the Special Representative of the Commission on Human Rights on the situation of human rights in Rwanda; the meeting was also attended by representatives of the Office of the United Nations High Commissioner for Human Rights, the European Union, the Governments of Belgium and the United States of America, the Organization of African Unity (OAU) and others.

5. He also visited police stations, military compounds, prisons and other places of detention, including protective detention, listed in annex VI. Unfortunately, owing to various obstacles and delays, the Rapporteur was unable to visit in August the detention centres of the Detection of Unpatriotic Activities Police (DEMIAP) and Litho Moboti Group (GLM) building of the Special Presidential Security Group (GSSP), where a prominent member of the opposition active in the protection of human rights is being held.

6. The Special Rapporteur transmitted to the Government two communications containing allegations of violations of the human rights of 2,375 individuals. He also sent 19 urgent actions on cases regarding 218 individuals. He did not receive a reply to any of these submissions. However, both the Government and RCD sent the Special Rapporteur general reports in response to the issues he had raised in his previous reports and his interviews. For the most part, the responses consisted of denials of the allegations and of accusations against the other side in the war. In any case, it must be acknowledged that the Minister of Human Rights of the Government of the Democratic Republic of the Congo has admitted that there have been excesses and abuses by the security forces, which have resulted in loss of life and harassment of human rights advocates. In one case, the Special Rapporteur issued a press release. During his second visit, he sent President Kabila a letter asking for clemency for 19 persons who had been sentenced to death.

B. Joint mission to investigate allegations of massacres

7. In paragraph 9 (b) of its resolution 1999/56, the Commission on Human Rights requested the Special Rapporteurs on the situation of human rights in the Democratic Republic of the Congo and on extrajudicial, summary or arbitrary executions and a member of the Working Group on Enforced or Involuntary Disappearances to carry out, immediately after the signing of a ceasefire agreement or as soon as security considerations permitted and, where appropriate, in cooperation with the National Commission of Inquiry to investigate human rights violations and breaches of international humanitarian law in the Democratic Republic of the Congo (formerly Zaire) between 1996 and 1997, a joint mission to investigate all massacres carried out on the territory of the Democratic Republic of the Congo, especially those in the province of South Kivu and other atrocities as referred to in the report of the Special Rapporteur on the situation of human rights in the Democratic Republic of the Congo (E/CN.4/1999/31), with a view to bringing to justice those responsible and reporting to the General Assembly at its fifty-fourth session and to the Commission at its fifty-sixth session. Accordingly, the Special Rapporteur contacted the Special Rapporteur on extrajudicial, summary or arbitrary executions and a member of the Working Group on Enforced or

Involuntary Disappearances and informed them of the prevailing security conditions. He took up the issue directly with President Kabila, who expressed his willingness to cooperate fully with the joint mission as soon as security conditions permitted. In the opinion of the Special Rapporteur on the situation of human rights in the Democratic Republic of the Congo, the security conditions necessary for the conduct of investigations have not been met.

8. Moreover, the National Commission of Inquiry, which was established by the Government in January to investigate these incidents in response to a request from the Security Council in July 1998 (see S/PRST/1998/20), has not been able to carry out its work owing to the fact that most of the alleged incidents took place in rebel-occupied territory or in combat zones. The Special Rapporteur will report on further developments to the Commission on Human Rights at its next session.

C. Reprisals against individuals who cooperated with the United Nations

9. In accordance with Commission on Human Rights resolution 1999/16, the Special Rapporteur briefed the Secretary-General on the situation of Commander Makelele Kabunda, arrested on 20 March while attending the Military Court trial of two colleagues accused of having transmitted a report to the Special Rapporteur in February; on the situation of Bofassa Djema, member of the Executive Committee of the Mouvement populaire pour la République, who was prevented from leaving the country on 23 February, three days after meeting with the Special Rapporteur; and on the situation of Kambaji wa Kambaji, political leader of the Union for Democracy and Social Progress (UDPS) in Kinshasa, who was arrested on 19 July on the charge of having sent information to the Office of the United Nations High Commissioner for Human Rights.

10. The most serious case, however, was the persecution in Goma, where RCD has its headquarters, of five human rights advocates from the non-governmental organizations Grande Vision, CREP-LUCODER, Promotion et appui aux initiatives féminines (PAIF)/North Kivu and Action paysanne pour le reconstruction et le développement (APREDECI), who met with the Special Rapporteur on 21 February. The Rapporteur visited them during his brief trip to Uganda to confirm the facts.

D. International human rights agreements and cooperation with the United Nations

11. The Democratic Republic of the Congo is a party to the international instruments listed in annex VII. The Minister of Human Rights indicated on 10 December 1998 that the Democratic Republic of the Congo would accede to the two additional protocols to the Geneva Conventions of 1949, an announcement that the Special Rapporteur welcomed and reported to the Commission on Human Rights in his presentation of his previous report. Unfortunately, nine months after the announcement, the decision still seems to rest with the President, who is awaiting a report from the Ministry of Defence.

12. The Special Rapporteur welcomes the fact that, with the help of the Human Rights Field Office in the Democratic Republic of the Congo, all the international instruments to which the Democratic Republic of the Congo is a party were published in a special edition on 9 April. According to what the President of the Military Court told the Rapporteur, the Court interprets international law as subordinate to domestic law.

II. The armed conflict[3]

13. On 2 August 1998, war broke out in the Democratic Republic of the Congo, six days after President Kabila's expulsion of his former ally, the Rwandan Patriotic Army (APR), from the country. An unknown party, later known as the Rassemblement congolais pour la démocratie (RCD), attacked the Democratic Republic of the Congo with the support of Rwanda, Uganda and Burundi. Rwanda and Uganda have openly acknowledged their support, while Burundi continues to deny its involvement. In November 1998, another armed group, the Mouvement de libération du Congo (MLC), began to operate. By 31 August 1999, these groups had occupied 60 per cent of the territory.

14. Invoking the inherent right of individual or collective self-defence as set out in Article 51 of the Charter of the United Nations, and as recalled in Security Council resolution 1234 (1999) of 9 April 1999, troops from Angola, Namibia, the Sudan, Chad and Zimbabwe intervened in the conflict in support of the Congolese Armed Forces (FAC). In addition to the national armies, there are at least 17 irregular armed groups (see annex VIII). The presence of so many armies and armed groups can be explained by the fact that various other domestic and foreign conflicts are taking place in the territory of the Democratic Republic of the Congo (see annex IX).

15. Throughout the country, both within and outside the occupied zone, the war is perceived as foreign aggression. A group of high-ranking religious leaders representing the principal faiths of the Democratic Republic of the Congo (Roman Catholic, Protestant, Kimbanguist, Orthodox, Islamic), headed by Cardinal Eltsou, issued a statement on 23 August demanding the withdrawal of all the foreign troops that had come to plunder the country's wealth.

16. The violence has been extreme, especially in the east. The activities of the foreign-backed rebels have been countered by the terrorism of the Mai-Mai,[4] who are supported by the population, with the commendable exception of human rights advocates who continue to oppose violence of any kind. The health infrastructure has been completely destroyed, and the population has reverted to traditional medicine. On both his visits to the zone, the Rapporteur had the impression that an atmosphere of terror prevailed. The people living in the occupied territory consider the *Interahamwe* to be primarily responsible for the violence followed by the Mai-Mai and "Rwandan soldiers". However, when asked whom they feared most, they first mentioned Rwandan soldiers, then the *Interahamwe* and, finally, the Mai-Mai "who do not kill Congolese".

17. At the end of the first year of the conflict, it was estimated that 6,000 people had lost their lives and that 500 were missing, not to mention the thousands who had been displaced or had sought refuge abroad. As is usually the case, most of the victims have been civilians owing to the reaction of RCD officials and soldiers. When Mai-Mai guerrillas and Rwandan *Interahamwe* militia attack RCD-controlled towns, RCD requests reinforcements for defence. If, on arrival, the reinforcements do not encounter the enemy, they have been known to commit unspeakable massacres of the civilian population. That was, more or less, what occurred in Kasika, Makobola, Kamituga and Buyankiri, incidents that RCD now considers "unfortunate mistakes".[5] The most deplorable actions by the Government and its allies in 1999 were the bombing of the civilian populations of Kisangani in January (at least 17 dead), Goma (between 30 and 65 dead, depending on the source) and Uvira (three dead), and the atrocities committed by Chadian soldiers in Bunga and Gemena.[6]

18. *Peace initiatives*. There is a general feeling throughout the country that "the international community is not doing anything to end the conflict". This has been expressed by President Kabila, the RCD authorities, people living in the territories controlled by the Government or by RCD civil society and religious leaders. In the opinion of the Special Rapporteur, that sentiment is not entirely genuine and is unfairly critical of a number of African countries, particularly Zambia, the Libyan Arab Jamahiriya and South Africa, which have done their best to promote peace (see annex X). It is the protagonists — the Governments of the Democratic Republic of the Congo, Uganda and Rwanda and the leaders of the RCD and MLC — who have always been intransigent. Many meetings that were called were unsuccessful because the parties concerned did not attend. The Peace Agreement concluded in Sirte, Libyan Arab Jamahiriya, was not signed either by Rwanda nor by RCD, and Uganda later claimed that it was only a letter of intent. In May, Rwanda declared a unilateral ceasefire, which was broken after the bombing of Kisangani.

19. Despite the efforts of the "international community", the Congolese people, who consider themselves under attack by foreign countries, cannot understand certain terms. The Special Rapporteur was asked why the aggressors are called "uninvited countries" or "forces opposed to the Government that are violating national sovereignty and territorial integrity".

20. *Categorization of the conflict*. In paragraph 41 of his report on the situation of human rights in the Democratic Republic of the Congo (E/CN.4/1999/31), the Special Rapporteur categorized the conflict in the Democratic Republic of the Congo as an internal conflict with the participation of foreign armed forces. Various facts make it necessary to review this point. Foreign armies, including those that responded to the appeal by President Kabila to intervene in accordance with Article 51 of the Charter of the United Nations, and those described by the Security Council as "uninvited" countries, have exchanged prisoners in accordance with the provisions of the third Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949; the presence of prisoners has been detected in territories of the "uninvited" countries; there have been clashes typical of any war between foreign national forces in Congolese territory; and "uninvited" States have signed the Lusaka Ceasefire Agreement, which specifically refers to the mixed nature of the conflict. The Special Rapporteur therefore believes that there is in fact a combination of internal conflicts (RCD against the Kinshasa Government and MLC against Kinshasa) and international conflicts, such as the conflict between Rwanda and Uganda in Congolese territory, clashes between the Rwandan and Ugandan armies and FAC, and clashes between foreign armies in the Democratic Republic of the Congo. In the international conflicts, respect for the four Geneva Conventions is required, while in the internal conflicts, the provisions of article 3 common to the four Conventions are applicable.

21. *Ceasefire of 10 July*. The ceasefire agreed upon in Lusaka by representatives of the Democratic Republic of the

Congo, Namibia, Rwanda, Uganda, Zimbabwe and Angola (witnessed by representatives of the United Nations, OAU, the Southern African Development Community (SACD) and Zambia) was not signed by the rebel groups of RCD (its two factions) or MLC. The latter signed on 1 August and, on 31 August, RCD had it signed by 50 of its founding members, thereby revealing not unity but deep-seated internal differences.

22. The Ceasefire Agreement contains military and political aspects. The latter will be considered later. The military aspects provide for an immediate ceasefire, the release of hostages within three days (although this concept is unclear, since those whom RCD regard as "hostages" are considered by the Kinshasa Government to be "protected persons"; the word "hostages" is not defined in annex A), a joint military commission, and an international peacekeeping force administered by the United Nations. Prisoners have to be released within 30 days. A "facilitator" and OAU observers are to be selected (Lalli Rachel, an Algerian general, has already been appointed), and armed groups are to be disarmed over a period of between 30 and 120 days (an essential task, but one that is difficult to carry out). The Special Rapporteur notes that the fulfilment of many of the provisions that have been adopted is beyond the control of the parties so that there is a great risk of allegations of a failure. The integrity of the Congolese borders is confirmed. It is important to note that the parties are required to refer all identified cases of genocide to the International Criminal Tribunal for Rwanda, and to hand over those responsible for war crimes and crimes against humanity to the national courts.

23. At the time this report was being completed, it was not possible to assess whether or not the Agreement was being respected.

Refugees, displaced persons and persons at risk

24. *Refugees*. The United Republic of Tanzania and Zambia have been the main countries of asylum for Congolese fleeing from the war. Rwandans have also sought asylum in their flight from the Mai-Mai.

25. *Refugees in the Democratic Republic of the Congo*. External conflicts have led to the presence of refugees in the Democratic Republic of the Congo, mainly from Brazzaville, Congo (40,000, although some 7,000 have returned) and Cabinda, Angola. The Government, in violation of its international obligations, has sometimes deprived them of their liberty (see para. 50).

26. There are some 13,000 Rwandan Bahutu refugees in the Democratic Republic of the Congo, following the voluntary return of 4,750 persons.

27. *Displaced persons*. The war has led to the displacement of about 600,000 persons, many of whom are in hiding in the jungle, particularly those who were not able to reach the United Republic of Tanzania. In February, the Special Rapporteur visited the Kamalondo centre in Lubumbashi, which was sheltering about 382 people.

28. *Persons at risk*. This classification has been given to Tutsi or people who look like Tutsi who live in the area controlled by Kinshasa and fear attacks against them by the civilian population. In order to protect them (which RCD has not accepted, insisting that they are hostages), the Government housed them in January at the Kokolo military camp, and then transferred them to facilities provided by the National Social Security Institute (INSS) in Kinshasa. In Lubumbashi, they were sheltered in the former Batika convent and in Kolwezi. The Special Rapporteur visited INSS and Batika, as he reported in his oral presentation to the Commission on Human Rights. The accusation by RCD that the Special Rapporteur has forgotten all about these people is therefore false. Once the visas were obtained, the Government, in conjunction with the African and Western host countries and with the assistance of the International Organization for Migration, made the necessary arrangements for asylum, ensuring that the Congolese were able to return freely. However, other persons in hiding who were being protected by the local population have requested the same opportunity.

III. Political development

A. In Government-controlled territory

29. Essentially, the Kinshasa regime has not changed. The human right to democracy has not been restored, and there is no indication that it will be recognized in the near future. The President continues to exercise full executive powers (which is normal); he also exercises legislative powers (bodies such as the Commission on Institutional Reform or the Committee on the National Debate are only advisory) and has significant powers with respect to the judiciary (E/CN.4/1998/65, paras. 32-37; E/CN.4/1999/31, paras. 16-24). According to the announcements made when he assumed power, the transition to democracy should have been completed on 17 May. This transition has not yet begun.

30. The new law on political parties, Decree-Law No. 194 of January 1999, was presented as a liberalization of political activities. Although it contains reasonable provisions aimed at preventing the establishment of tribal, regional or family parties, the operation of political parties is ultimately subject to the approval of the Ministry of Justice, which authorizes them and suspends them if there is a risk of a breach of the peace (arts. 15 and 40). The most serious aspect, however, is that since the Decree-Law entered into force, all legally constituted parties have been illegal. No party that had been legally constituted before the promulgation of the new law has registered in accordance with the Decree-Law, and the 10 parties that were interviewed confirmed that none of them will do so. The Special Rapporteur received reports of detentions, searches and other forms of persecution affecting about a dozen parties, which demonstrates that the law has in no way changed the previous situation.[7]

31. The greatest problem is that the Decree-Law on the "national debate" and the Lusaka Peace Agreement envisage the participation of delegates from opinion groups, Congolese political and civil organizations ... without exception, Congolese parties and the political opposition. When asked what parties or groups these would be, the President, the Minister for Information and the Vice-Chairman of the Organizational Committee for the National Debate all gave the same reply: "in order to avoid chaos, they will obviously be parties that comply with the law". There are no such parties. For the President, "parties are a source of division among the Congolese".

32. The clearest sign that no one had understood that there would be political liberalization is the previously cited statement issued on 23 August by the principal religious groups, which calls for "freeing the political arena".

33. The draft of the new constitution has not been the subject of any discussion. On 10 February, the Commission on Institutional Reform submitted its report to the President, and there has been no further talk of a plebiscite. It was to have been discussed in the national debate.

34. Decree-Law No. 213 of 27 March 1999 calls for a national debate to discuss three issues selected, without prior consultation, by the President: legitimacy of power, the draft constitution and Decree-Law No. 194 on parties. An organizational committee appointed by the President is being established, and its report will be submitted to him. there will be delegates from opinion groups (see para. 31), and exiles and "invited personalities". The Vice-Chairman of the Organizational Committee said that the latter could include the leaders of disbanded political parties. In the five months that have elapsed, many people have registered to participate, and the Government has selected 181 of them; dates have been set and postponed; venues have been selected and changed; the proposed facilitators referred to earlier have visited the country; and three committees have been established. However, a "national debate" has yet to be held, and only the Organizational Committee is in operation.

35. The Peace Agreement envisages a "national dialogue (inter-Congolese political negotiations)" with the participation of the Congolese parties, namely, the Government of the Democratic Republic of the Congo, RCD, MLC, the political opposition, which the Government understands to be the "legal" parties, and representatives of *les forces vives* of the nation, all with identical status.

36. Furthermore, People's Power Committees (*Comités de Pouvoir Populaire*) have been established to replace the Alliance of Democratic Forces for the Liberation of Congo-Zaire (AFDL), which brought Kabila to the Presidency. Their function is to organize the people and establish policy in all aspects of national life. All inhabitants, at their respective levels (street, neighbourhood, commune, village), are members. At their first Congress, the President defined the Committees as the new democracy. They are financed by the State. The population constitutes a single party and complains that sometimes its members have served as police informants for the arrest of opponents.

37. The army continues to have a very strong influence. According to reliable reports, there are 13 security, military and police forces, apparently all authorized to make arrests. One positive feature is the recent replacement of the former classification between commanders and troops by the establishment of ranks: lieutenant general, brigadier general, colonel, lieutenant colonel, major, force commander and regional commander, which should prove useful in determining responsibility and ending impunity.

B. In territory controlled by RCD and MLC

38. In the territory controlled by RCD, there is no other party except for a small party called the Reformers' Movement (*Mouvement des réformateurs*). In January, it held a general assembly that established an assembly and a collegial presidency consisting of eight members, the only way of harmonizing its various civilian and military components. In March, the rift was consolidated when its president, Wamba dia Wamba, who is supported by Uganda, left for Kisangani. In May, supporters of the Rwanda-backed Goma faction clashed with supporters of Kisangani, leaving

between three and eight people dead. In Goma, the assembly established in January was dissolved in June.

39. The worst confrontations occurred between 15 and 18 August, when Ugandan soldiers clashed with Rwandan soldiers in Kisangani, which resulted in the death of some 200 soldiers and 30 civilians. The residence of Bishop Laurent Monsengwo, who has been critical of the Rwandan presence in his homeland, was attacked by the Rwandans.

40. In order to deal with the civilian population, most of which is hostile to it, RCD has established "self-defence groups", trained by Rwandan soldiers. These groups have often been accused of arresting or kidnapping individuals. The groups constitute a real paramilitary force, which has even been accused of the death of a priest.

41. Various measures adopted by RCD have increased hostility towards it: the flight of national wealth to Uganda and Rwanda; the introduction of a new flag; the declaration of the "twin towns" of Kigali and the South Kivu region; and, lastly, the formation of a so-called parliament (*baraza*), the members of which were appointed by the Governor of South Kivu.

42. The Special Rapporteur has not been able to obtain information on the political situation in the territory controlled by MLC.

IV. Situation of human rights

A. In Government-controlled territory

Right to life

43. *Death penalty*. In his oral presentation to the Commission on Human Rights at its fifty-fifth session, the Special Rapporteur said that "in 1999, such sentences (by the Military Court) have not been carried out, which indicates progress with regard to what I stated in the report". That same month, the practice of public executions was resumed and, during the year, a very large number of people — particularly members of the former armed forces of Zaire (former FAZ) or those found guilty of armed robbery, were sentenced to death. Over 100 executions were reported.

44. In a letter to the Secretary-General, the Government declared itself to be abolitionist, just as President Kabila had done in a letter to the Special Rapporteur. In both cases, however, the death penalty was defended both for historical reasons ("it was established by the Belgians in 1940 for 17 crimes") and for practical ones ("the people must have security; we don't have a reliable judiciary; people arrested for serious crimes are always released; we don't have high-security prisons"). The Special Rapporteur does not, of course, share these views, which are the same ones cited by those who are not abolitionist.

45. *Enforced disappearances*. The Special Rapporteur has received information, which he transmitted to the Government, on the disappearances of 14 persons following their arrest, at various times and under various circumstances, including a journalist, a serviceman and four persons of Tutsi origin. Most of these acts have been attributed to the Rapid Intervention Police (PIR), the National Information Agency (ANR) and the Special Presidential Security Group (GSSP).

46. *Arbitrary taking of life through abuse of power protected by impunity*. There have been many reports of attacks resulting in deaths, committed with the intent of taking money, property or vehicles.

47. *Death by torture*. A former colonel and a son of a former public official were among those tortured to death; these cases were reported to the Government.

Right to physical and psychological integrity

48. *Torture*. The most frequent cases that have come to light involve former members of FAZ. The forms of torture reported have basically included beating, humiliation (stripping) and asphyxiation. Journalists, political leaders, human rights activists, university professors, a Protestant pastor and even refugees from the Congo have been tortured, and there have been reports of women being raped in detention centres or during raids. The locations most frequently cited are the GLM building, the GSSP office in Kinshasa (which the Special Rapporteur visited in February), national police headquarters and the provincial police inspectorate in Kinshasa. Other places where torture is said to be practised are the National Palace, where the Training Centre for Airborne Troops (CETA) is allegedly based; the offices of which the Special Rapporteur visited in September, and where he met with Congolese refugees from Brazzaville and Cabinda; the barracks of the 50th Army Brigade (camp Kokolo); the *cachots* of the provincial police inspectorate (formerly Circo); and the DEMIAP compound.

Right to security of person

49. While the pillaging that took place during the Mobutu era is certainly no longer common practice, there have been many reports of abuses concerning individuals whose property was robbed by soldiers and public officials. Some homes belonging to former leaders of the deposed regime

have not been returned. One person who refused to leave his house, which was not on the list of requisitioned property, was arrested, in order to force him to turn it over to the Presidency.

Right to liberty of person

50. The Special Rapporteur cannot support the President's claim that "there are no political prisoners in the Democratic Republic of the Congo since I have not ordered anyone's arrest". This is clearly one of the least respected rights in the Democratic Republic of the Congo. Political leaders, activists, union leaders, journalists, soldiers, students, traditional chiefs, priests and pastors, attorneys acting in their professional capacity and refugees are constantly being arrested for no apparent reason. Most arrests are made by ANR, the police, GSSP, DEMIAP and PIR. Sometimes the arrests appear to be ordered by the State Security Council. Often, no reason for the arrest is given, nor are the detainees brought promptly before a judge. Cases have been reported where persons have bought their freedom. The reason most often cited is collusion with the rebels, an accusation that is often made against foreigners. Even government ministers, police officers, high public officials, judges and magistrates have been arrested; some of them have been subsequently reinstated in their positions.

51. The Special Rapporteur was surprised at the number of soldiers, most of whom were from Équateur province, who had been deprived of their liberty, some for nearly a year, without a trial. The Special Rapporteur wanted to visit them at DEMIAP; however, despite reports that they had been moved to another detention centre in anticipation of that eventuality, it was not possible to visit the premises of DEMIAP.

52. Positive developments included the release of three prominent members of the political opposition and, seven members of the military in August. In May, 1,600 soldiers were released, although they were reportedly sent to the front.

53. *Prison conditions*. Except for Makala prison in Kinshasa, where the Special Rapporteur noticed improvements during his visit in February, conditions in the remaining prisons are appalling. At Lodja prison in Kasai Oriental, two thirds of the buildings have no roofs and there is no health care. Inmates suffer from an alarming level of malnutrition and all sorts of epidemics. The Special Rapporteur also visited Kasapa prison in Lubumbashi, where three children between 12 and 18 months of age were with their inmate mothers and were not receiving any assistance whatsoever. In Boma (Likasi), 70 per cent of the inmates suffer from malnutrition, and many have dysentery and other illnesses. They are visited by the International Committee of the Red Cross (ICRC), which provides food, but not by the Office of the United Nations High Commissioner for Human Rights. Visits to the *cachots* of GSSP, ANR and DEMIAP are extremely rare.

54. *Right to enter and leave one's own country*. Many political leaders, journalists and even traditional chiefs have been prevented from leaving the country or even from leaving Kinshasa. Sometimes their passports have been confiscated.

Right to due process

55. *Concerning criminal charges*. The most serious denial of justice takes place in the Military Court. Although both the current and the former President (who was himself a prisoner) maintain that all the provisions of article 14 of the International Covenant on Civil and Political Rights are observed, the Special Rapporteur disagrees. It is not possible to uphold the right to a defence when the trial is held a few hours after the crime. The situation as described in paragraphs 90 and 92 of the Special Rapporteur's report of 8 February 1999 (E/CN.4/1999/31) remains unchanged. Of greatest concern is the frequent imposition of the death penalty. Although the Military Court was established to try only soldiers and persons accused of armed robbery, many members of the opposition have been tried and sentenced to prison.

56. *Impunity*. The human rights violations discussed in this report continue to go unpunished, since no convictions of the perpetrators have been reported.

Right to freedom of expression and opinion

57. On 26 June, the Minister of Justice stated that the Government and security forces would not hesitate to take severe action against any person, especially journalists, who unjustly attacked the head of State or a member of the Government.

58. In fact, it is the security forces that make the arrests, sometimes without instructions from the Government (which should ultimately assume its responsibility). The Minister of Information has sometimes intervened to have a journalist released. It is true that the Minister of Information has not ordered anyone's arrest. The Special Rapporteur learned of an order signed by the Director of Operations of the State Security Committee, acting on behalf of the Special Security Adviser to the Head of State, instructing Commander Shabani, accompanied by two soldiers, "to bring in the person responsible" for three daily newspapers that he

mentions, without giving any legal basis or reasons, as well as a summons, also without any legal basis whatsoever, signed by Commander Étienne Kabundi of GSSP, the reason for which "will be explained when the person in question shows up".

59. The Minister of Information informed the Special Rapporteur that the Government recognized as newspapers only the 50 or so that had legally registered under a law dating from the Mobutu era. The rest are considered "scandal sheets".

60. Concessions for radio frequencies and television channels require authorization from ANR. As part of the terms and conditions, the applicant must agree to treat political news "with impartiality and objectivity". State television has clamped down on all areas that had opened up during the Mobutu era. Private television has a certain degree of autonomy but it is extremely limited by self-censorship. The same is true for radio, which has no room at all for the opposition. There are six private radio stations in Kinshasa, all of which have reported "confirmed irregularities", such as "making a radio transmitter available to BBC Network Africa to broadcast from the draft resolution: Raga SPRL thus took the place of the Congolese State"; or "transmitting Vatican Radio news in full".

61. Many journalists have been arrested, prevented from leaving the country and harassed. One has even disappeared.

Freedom of association

62. *Non-governmental organizations.* As in the case of political parties, new laws required non-governmental organizations to reorganize themselves, which none has accepted. Regrettably, the Government (with the exception of the Minister for Human Rights), regards non-governmental organizations as a kind of enemy to be fought or, at best, as "political parties" (Kabila to the Special Rapporteur). The Special Rapporteur wishes to state that, contrary to what the President has claimed, non-governmental organizations have proven their professionalism and dedication to the cause of human rights. The most relevant example took place when a minister known for his hatred of non-governmental organizations was arrested: the non-governmental organizations demanded the minister's release even though the price was the arrest of one of their presidents as a consequence of that action. Some 30 heads of non-governmental organizations have been arrested this year (at least three are still being held), and many have been harassed; their headquarters have been searched, with or without the proper warrants.

63. *Labour organizations.* Their situation is similar to that of non-governmental organizations, and many of their leaders have been arrested.

Freedom of assembly

64. The exercise of this right has been suppressed. The mere act of an opposition political party carrying the national flag, or jeering at the Head of State, have resulted in many arrests.

Right to a nationality

65. Nationality legislation under Mobutu, which left thousands of individuals of Rwandan origin stateless and in part caused the rebellion that overthrew him, has not been improved by the new provisions of Decree-Law No. 197 of 29 January 1999, which reiterates the exclusivity of Congolese nationality (art. 1). The peace agreements (para. 16) provide a solution, but it could be resisted by ethnic groups considered indigenous.

Economic, social and cultural rights

66. These rights have been seriously affected by the war, both because it consumes Government's entire revenue and because the free circulation of goods is prevented by the hostilities. According to reports, 80 per cent of budget allocations are directly or indirectly related to the war. In January, a decree-Law (NE 177) prohibiting all foreign-currency transactions did not succeed in lowering prices; on the contrary, it led to an increase in transport costs. Serious everyday problems in such areas as housing, health and education have not been addressed. The current rate of inflation is extremely high. Civil servants' salaries are very low and have not been paid for several months.

67. *Health.* The Democratic Republic of the Congo accounts for 65 per cent of all tuberculosis cases in Central Africa (54,575 cases). In March, a poliomyelitis epidemic broke out in Équateur province; about 100 people were affected. In Bandundu, six people died of meningitis during a nine-day period in March. Health conditions have been seriously affected by the war. There is an alarming degree of malnutrition, which affects 80 per cent of the population in some areas. People eat once a day or, in some cases, once every two or three days.

68. *Education.* Because of the war, no measures have been taken to guarantee the exercise of this right. Many parents are not sending their children to school because they cannot afford the school fees.

Situation of women

69. Like traditional practices, the Civil Code (which follows the Western Napoleonic tradition) has no legal capacity where married women are concerned: in order to conclude legal instruments or contracts, a married woman must obtain her husband's consent, without which those instruments are invalid (art. 217); if a father and mother disagree in matters of parental authority, the father's wishes prevail (art. 317); and a married woman requires her husband's permission to contract civil obligations, without prejudice to her right to petition the courts for annulment of her husband's decision (arts. 448 and 449).

70. Many reports confirm that rape, even that of girls, still occurs in prisons and during military operations. Women seeking to leave the country are subjected to gruelling humiliation.

Situation of children

71. While the use of children in warfare is less frequent than in the case of RCD, some 6,000 children are in military service. However, this is not the only way in which children's rights have been affected: the war has lead to a rise in the school drop-out rate. In May, the Government established the National Children's Council, which, *inter alia*, involves members of the community and school representatives in monitoring the implementation of the Convention on the Rights of the Child. The Council works with non-governmental organizations. It is still too early to evaluate the results of its activities.

72. One initiative that deserves the Special Rapporteur's full support is the organization by the Ministry of Human Rights of a pan-African conference on the demobilization of child soldiers, to be held in November with assistance from the Ministers of Defence, the Interior, Foreign Affairs, and Reconstruction, and with funding from the United Nations Children's Fund (UNICEF). The conference will deal with such issues as disarmament, demobilization and social rehabilitation.

73. *Situation of older persons*. The Special Rapporteur has not been informed of the adoption of any special programmes for older persons during the International Year of Older Persons. Older persons make up 3.5 per cent of the Congolese population and enjoy great respect in Congolese culture and in African culture in general.

B. In territory controlled by the Rassemblement congolais pour la démocratie and the Mouvement de libération du Congo

Right to life

74. *Death penalty*. Although the death penalty is permitted under the law, it has not been applied since the beginning of the war. The authorities have stated that, "in this part of the country, it was applied only by Kabila". During his two visits, the Special Rapporteur spoke with prisoners who had been sentenced to death, but he was assured that their sentences would not be carried out. In February, he met a 15-year-old youth in Goma who had been sentenced to death; the RCD official responsible for foreign affairs acceded to the Special Rapporteur's request for a commutation of the sentence.

75. *Enforced disappearances*. There have been many reports of the enforced disappearance of detainees, including Congolese and Rwandan Bahutu attempting to leave the territory. The victims include a former Protestant minister and the former Governor of North Kivu.

76. *Death by torture*. Cases have been reported in Luvingi, including the case of one individual who had refused to provide meat to Rwandan soldiers.

77. *Politically motivated murders*. There are reports that, when RCD forces occupy a city or town, they usually kill their opponents. The Special Rapporteur has been informed of the murder of a highly respected priest who had criticized the rebellion; of a haulage contractor working for a church in Uvira; of an individual killed in Bukavu on 24 February; of a young man in Mpenekusu (Shabunda) who died after being castrated; and of many people in Bushaku who were murdered by rebel soldiers for being, or on suspicion of being, members of the opposition.

Right to physical and psychological integrity

78. *Torture*. RCD soldiers and members of the security forces have been accused of torture. The compound known as Bureau 2 is most often mentioned, but reports stress that there are other, unknown, *cachots*, including one known as *chien méchant* ("vicious dog"). The victims are primarily individuals suspected of being *Interahamwe* or Mai-Mai. There are reports that women in detention centres are often raped, although there were fewer allegations of such cases during the Special Rapporteur's second visit.

Right to liberty of person

79. Anyone who expresses opposition to what the people call the "occupation" or "aggression" is arrested. Use of the terms "Rwandan army" or "foreign army" is prohibited. Human rights advocates and journalists are the worst affected. In the Bukavu jail, the Special Rapporteur met with journalists who had exercised on the radio their legitimate right to inform. The accusations tend to confuse any form of political criticism with ethnic hatred and genocide.

80. The jails, including those in the territory governed from Kinshasa, are visited by ICRC, which provides food and health care. Adult and juvenile prisoners are not separated and soldiers are incarcerated together with civilians, a fact which the latter perceive as a serious threat (27 imprisoned soldiers were released the day before the Special Rapporteur's visit to Bukavu).

Freedom of movement

81. Two types of violation of the right to freedom of movement are committed against traditional local leaders. First, persons whom the Kinshasa Government have invited to participate in the national debate are forbidden to leave the region. Second, Congolese and Rwandan Bahutu citizens are forcibly deported to Rwanda. Although the RCD authorities deny this accusation, the Special Rapporteur has sufficient grounds for his assertion. The most serious aspect of the problem is that some cases of deportation have gone wholly unnoticed.

Freedom of expression

82. According to the Chief of the Department of Justice, there are no private radios in Goma, although there are some in Bukavu and Kisangani. There are some privately run newspapers, which are small and do not have a large circulation. Publication of the Goma newspaper *La Croissance plus* was suspended on allegations of incitement to hatred. In Bukavu, a publication of the *Groupe Jérémie* was also suspended for printing a leaflet dealing with the Day of the African Child. The Special Rapporteur has read the leaflets carefully and found absolutely nothing that could be interpreted as incitement to ethnic hatred. Another publication, *La Clé de Geapo*, has also been suspended. In July, the Governor of South Kivu suspended publication of all privately run newspapers, including newspapers published by non-governmental organizations. As in Kinshasa, all these measures were taken on the basis of legislation enacted during the Mobutu era.

83. On 23 March, the Governor of South Kivu subpoenaed representatives of two radio stations, Radio Maendeleo and Radio Kahuzi, and of the non-governmental organization *Héritiers de la Justice*, in order to make it clear that there were guidelines that must be followed. Later, by order of the Chief of the Department of Information, the Government instructed all newspapers and other publications to "put themselves in order" — an allusion to the political content that it attributed to certain articles. Moreover, Radio Maendeleo (a privately run radio station) was forbidden to broadcast any news and was permitted only to repeat the news programmes of the National Radio and Television Corporation, which is controlled by the rebel forces in the region. In March, a member of the military was appointed to act as a full-time censor of the radio station. Finally, on 30 July, the station was suspended, according to the Chief of the Department of Information, owing to a conflict between the owner and the broadcasters. What was not stated is that the owner is a State body, the Higher Institute of Rural Development. Two communications experts were arrested on 25 August and a third on 27 August, on charges of knowing the frequency of the army's radio transmissions. They had the frequency only in order to request assistance if necessary; they had never passed it on to anyone else. The charges, which were completely groundless, were that they planned to use the frequency to provide information to the enemy (they were released on 8 September).

84. Dissidence in public places is prohibited. However, calls for action against the Mai-Mai and the *Interahamwe* in French- and Swahili-language broadcasts on the State-owned National Radio and Television Corporation (the programmes *Politique* and *Makala ya siasa*) are far more virulent and constitute greater incitement to hatred.

Right to due process

85. RCD has established a *Conseil de guerre opérationnelle* to try soldiers charged with robbery or insubordination. It is similar to the Military Court but has dual jurisdiction. The Special Rapporteur met with two people: one could provide little information since he did not speak French; the other said that he had not been allowed to chose his own lawyer and that he had not met the lawyer assigned to him until the day of the trial and had spoken only briefly with him. According to lawyers in Bukavu, trials are secret and there is no access to them.

86. *Impunity*. Defence lawyers explained to the Special Rapporteur that, "in general, soldiers are not tried for war crimes or human rights violations because they are needed in wartime". Soldiers are arrested only for ordinary crimes or for military offences.

87. Judges' salaries have not been paid since 1996 and, in any case, range between US$ 3 and US$ 30.

Freedom of association

88. *Human rights organizations*. RCD is openly hostile to non-governmental organizations. In its reply to the Special Rapporteur's oral presentation to the Commission on Human Rights, RCD claimed that, with the support of international financial assistance agencies, civil society in Bukavu "has become more of a political society or, more exactly, a grouping of extremist political parties". According to the Governor, financing from the Réseau européen pour le Congo (REC), the Netherlands Organization for International Development Cooperation (NOVIB) and the National Centre for Overseas Development (NCOS) is "for the secret services in the Congo [allusion to the Kinshasa regime] transformed into non-governmental organizations".

89. Various human rights activists were persecuted for having met with the Special Rapporteur and have had to seek asylum in Kampala, Uganda. Some were accused of transmitting reports to the Special Rapporteur. The Special Rapporteur considered the situation so serious that he made a special trip to Kampala to meet with them. The Chief of the Department of Justice considered that it was a question of persons seeking asylum. The Special Rapporteur has known these persons for many years and can attest to their commitment to human rights and lack of ulterior motives. The reality of their persecution is demonstrated by the revealing fact that no more than six non-governmental organizations attended the meeting with the Special Rapporteur in September, as compared to about 20 in February, and some 30 in Bukavu.

90. The situation is identical in Kisangani, and members of the Groupe Lotus were threatened and accused of transmitting reports and statements to the Office of the United Nations High Commissioner for Human Rights. The situation is the same in Kindu.

91. Distrust of any form of organization has become so extreme that cooperatives are being denied legal authorization in contravention of all legislation.

Freedom of assembly

92. Public meetings are prohibited, and even some that are authorized are later suspended (for example, International Women's Day).

Economic, social and cultural rights

93. *Health*. RCD has not taken measures to ensure effective enjoyment of these rights since, as in the west, the war effort consumes all income. In Kisangani, 13 per cent of the population suffered from malnutrition and 9.3 per cent was seriously undernourished. The infant mortality rate is more than 2.2 times the rate for Africa as a whole. There are many regions where malnutrition has reached 80 per cent. An aircraft chartered by the Office of the United Nations High Commissioner for Refugees to carry out a poliomyelitis immunization campaign was unduly detained in Goma, even though it was subsequently permitted to continue. In any case, the immunization campaign did not reach all children as it had in the west.

94. Epidemics of poliomyelitis were declared in Walikale, of smallpox in Katana, of Marburg virus in Durba and of cholera in Mweso. The delivery of humanitarian aid has sometimes been obstructed.

95. *Education*. In Kisangani, schools are open only a few days a week, while others have been closed. School enrolment has declined to alarming levels and, since students cannot be reunited with their families, some have ended up by joining the army. This has led to the phenomenon of "children without papers", since studies in the RCD-controlled territory cannot be validated in Kinshasa.[8]

96. *Remuneration of work*. Judges who were interviewed reported that civil servants had not been paid since the beginning of the war with the Alliance of Democratic Forces for the Liberation of Congo-Zaire.

Situation of women

97. There have been numerous reports that foreign troops with human immunodeficiency virus (HIV) are being used to infect Congolese women. However, such reports cannot be verified.

Situation of children

98. The most disturbing situation is that of child soldiers, whose number has not decreased. Unfortunately, RCD, citing reasons of security, is not prepared to participate in the pan-African conference on demobilization organized by Kinshasa.

99. There are many street children owing to the death of their parents during the war or in the massacres that have occurred in many villages. In South Kivu, 1,324 unaccompanied children have been registered; their parents were killed in massacres in the region. Among these, at least 13 survivors died as a result of neglect.

V. Violations of international humanitarian law

A. By the Government

100. The principal violations of the law on armed conflicts by the forces of the Kinshasa regime and their allies were:

(a) *Attacks on the civilian population*, especially the previously mentioned bombings of Kisangani (17 dead), Zongo (120) and Libenge (200) in January, and in Goma (between 30 and 65 dead) and Uvira (3) in May; and the atrocities perpetrated by Chadian soldiers in Bunga and Gemena. In addition to these, the Zimbabwean army's bombing of rebel-occupied towns claimed many victims.

(b) *Murders in Moba*, where, *inter alia*, some 300 civilians were killed, apparently during a search for rebels who were not found (second week of January 1999).

B. By RCD forces

101. *Attacks on the civilian population*. Attacks on the civilian population, as reprisals for acts committed by Mai-Mai in Makobola (end of 1998 and beginning of 1999) with about 800 dead; Bashali, Walungu, Mwenga, Mikondero, Kamituga, Budaha, Burhinyi, Ngweshe, Kigulube, Kibizi, Buyankiri and recently in Kasala (Katanga) are the cruellest and most violent incidents of the war. RCD claims that the incidents were provoked by the *Interhamwe* or the Mai-Mai, but these groups have no reason to commit massacres against the Congolese population or Hutu refugees, who account for most of the victims. Incidents such as those that took place in Kasika (1998) and Makobola were also denied, but were finally acknowledged as unfortunate mistakes.

102. The attack on the defenceless civilian population that occurred during a dispute between Ugandan and Rwandan soldiers in Kisangani in August, which claimed 30 civilian lives can be considered to be a similar incident.

103. *Arson and destruction*. Independently of the massacres, although sometimes in conjunction with the RCD forces have set fire to and destroyed many villages.

104. *Deportations*. Mai Mai and other persons have been arrested during military operations and transported to Rwanda where they usually disappear without a trace.

105. *Mutilation*. The Special Rapporteur received many reports of mutilation and, in at least one case, was able to verify it. During his mission in February, he met an 18-year-old man, arrested along with another young man in a village in South Kivu who had been arrested by Rwandan soldiers, on suspicion of collaborating with the Mai Mai. The first man's genitals were cut off completely, and he was abandoned alongside his comrade who had died by having his heart torn out; dying in the forest, he was later rescued but was left with irreparable physical damage.

106. *Rape of women as a means of warfare*. The Special Rapporteur received reports of rapes of women in Kabamba, Katana, Lwege, Karinsimbi and Kalehe. There were also reports of women being raped by Ugandan soldiers in towns in Orientale province.

VI. Conclusions and recommendations

107. In the territory controlled by Kinshasa, the Government's announcements concerning a democratic regime will be believable only if they are translated into effective measures of openness to all sectors, without unacceptable demands that reflect its ignorance of the enormous effort made by civil society since the holding of the National Sovereign Conference of 1991-1992. The political parties and non-governmental organizations established in accordance with the law in force at the time of their incorporation should be respected, and their participation in any serious process of reconciliation and democratization should be obligatory. Democracy is built by peoples or not at all. The valuable work of the Ministry of Human Rights must be supported.

108. Human rights, especially liberty of person and the freedoms of expression, opinion and association, must be restored, since their enjoyment today seems more like a concession from the authorities than an enforceable right. The Congolese people does not enjoy the right to be informed.

109. Human rights advocates and their organizations should be fully supported in their activities and not persecuted as they are today.

110. The human right to justice should be respected both in the hearing of criminal accusations and in transparent trials of human rights violators. This is the only way to put a stop to immorality and impunity.

111. The death penalty should be abolished. The Government's arguments for maintaining it are not convincing, especially since the President claims to be abolitionist. In any case, the Military Court's method of conducting trials genuinely undermines the rule of law, as was recently recognized at a successful seminar involving the entire legal community. At the same time, international

human rights agreements should be fully enforceable within the country.

112. RCD must stop viewing any dissident as a person guilty of acts of genocide or as an instigator of ethnic hatred. The reading of some press media to which such intentions have been attributed shows that the accusation is only a fallacious argument for preventing any expression of different opinions. RCD should be fully aware that the population rejects and fears it.

113. In both parts of the territory, it is essential to put an end to the discretionary authority, impunity and illegal acts of the so-called "security forces", which to the population mean the exact opposite of what their name indicates.

114. The peace agreements should be strictly observed. The Special Rapporteur notes that many provisions of those agreements are dangerously ambiguous, which leaves them open to intentional misinterpretation in order to accuse the other party of not observing them. The Special Rapporteur places his hope in the facilitators who are to be appointed.

115. The Special Rapporteur believes that the peacekeeping mission should not confirm the partition of the Democratic Republic of the Congo but should be deployed along the country's recognized northern and eastern borders.

116. War crimes and crimes against humanity should be tried and the guilty parties sentenced. In these matters, there is no room for amnesty of any kind. It is essential that allegations of the use of HIV-infected soldiers to decimate the civilian population be investigated.

117. The joint mission called for by the Commission on Human Rights in its resolution 1999/56 will be established as soon as security considerations permit, as stipulated in the resolution.

118. The Special Rapporteur unconditionally recommends the suspension of military assistance to all parties to the conflict.

119. The end of the recruitment of children cannot be delayed. The initiative of the Government of the Democratic Republic of the Congo to convene a pan-African conference for this purpose should be supported. Above all, this scourge should not be allowed to continue.

Notes

[1] Whenever a date is given without a year, the year is assumed to be 1999.

[2] The names of victims of human rights violations that came to the Special Rapporteur's attention during the course of the year are not included in the present report but will be included in the final report to the Commission on Human Rights.

[3] The report does not, of course, cover the purely military aspects.

[4] See note 4 of the report of the Special Rapporteur on the situation of human rights in the Democratic Republic of the Congo on 8 February 1999 (E/CN.4/1999/31).

[5] Chief of the Department of Security and Information (Bizima Karaha) and Chief of the Department of Justice, Institutional Reform and Human Rights (Jean-Marie Emungu); report transmitted by the Governor of South Kivu province.

[6] In general, the figures are not reliable and vary within a range of up to 200 per cent. The most generalized figures, or those from more reliable sources, have been used.

[7] The President added that "all those engaged in politics, such as non-governmental organizations and churches, should do so in conformity with the law on parties".

[8] The Special Rapporteur was able to bring from Goma to Kinshasa for correction some of the examinations taken by children living in the east, in keeping with an agreement reached by the United Nations Children's Fund (UNICEF).

Annex I

[Original: French]

Previous resolutions and reports of the General Assembly and the Commission on Human Rights

Previous resolutions of the Commission on Human Rights

1994/87 of 9 March 1994; 1995/69 of 8 March 1995; 1996/77 of 23 April 1996; 1997/58 of 15 April 1997; 1998/61 of 21 April 1998.

Previous resolutions of the General Assembly

53/160 of 9 December 1998.

Previous reports submitted to the Commission on Human Rights

E/CN.4/1995/67; E/CN.4/1996/66; E/CN.4/1997/6 and Add.1 and 2; E/CN.4/1998/65; E/CN.4/1999/31.

Previous reports submitted to the General Assembly

A/52/496; A/53/365.

Annex II

Officials of the Government of the Democratic Republic of the Congo with whom the Special Rapporteur met

February visit

Minister of the Interior
Deputy Minister of Local Government
Minister of Justice
Deputy Minister of Defence
Deputy Minister for Foreign Affairs
Minister of Human Rights (twice)
Attorney-General of the Republic
President, Prosecutor and members of the Military Court
Governor of Lubumbashi
People's Power Committees

August-September visit

Mr. Laurent-Désiré Kabila, President of the Republic
Minister of Human Rights
Minister of Information and Tourism
Minister of Social Affairs
Deputy Minister for Foreign Affairs
Prosecutor and President of the Military Court
Vice-Chairman of the Preparatory Committee for the National Debate, and members of the Committee

Annex III

Officials of the Rassemblement congolais pour la démocratie with whom the Special Rapporteur met

February visit

All members of the Political Council of the Rassemblement congolais pour la démocratie

August-September visit

Chief of the Department of Justice, Institutional Reform and Human Rights
Chief of the Department of Internal Affairs and Local Government
Governor of South Kivu province
Director of Bukavu Prison
Civilian and military judges

Annex IV

Other institutions, churches, judges, public organizations non-governmental organizations and political parties met in territory controlled by the Kinshasa authorities

Representatives of labour organizations
Former and current judges
Catholic Archbishop of Bukavu
Representatives of the Protestant, Kimbanguist, Orthodox and Muslim communities
Political leaders imprisoned in Kinshasa and Lubumbashi

Political parties

Union for Democracy and Social Progress (twice)
Unified Lumumbist Party (twice)
People's Movement for the Revolution (twice)
Forces novatrices pour l'union et la solidarité (twice)
Forces du futur (twice)
Union socialiste congolaise, part of Force politique de l'opposition intérieure
Démocratie chrétienne (emerged from the National Sovereign Conference), registered since that time
Front pour la survie de la démocratie (established 10 June 1997), not registered in accordance with Decree-Law No. 194.
Mouvement national congolais/Lumumba, established in 1958, François Lumumba
Mouvement national congolais, Etienne Mbaya

Non-governmental organizations[a]

Groupe de réflexion de l'Association culturelle Nande/Kyaghanda
Association culturelle Lori
ASLB Liberté
Amnistie-Congo
Cause Commune
Conseil de la campagne nationale pour la paix durable en République démocratique du Congo
Union nationale des Femmes (UNAF)
Association de professionnelles africaines de la communication (APAC)
Association nationale pour la défense des droits des migrants et ceux de la femme
Conseil national des droits de l'homme en Islam (CONADHI)
Les Amis de Nelson Mandela pour la défense des droits de l'homme
Comité pour la démocratie et les droits de l'homme
Voix des handicapés pour les droits de l'homme
Toges noires
Comité des droits de l'homme maintenant
Ligue nationale pour les élections libres et transparentes (LINELIT)
Voix des sans-voix pour les droits de l'homme
Oeuvres sociales pour le développement
Centre africain de recherche industrielle (CARI), Branche droits de l'homme, éthique et bonne gouvernance
Avocats sans frontières (ASF)
Ligue de conscientisation des électeurs (LICE)

Association nationale de détectives experts du Congo (ANADECO)
Structure de culture, d'éducation populaire et des droits de l'homme (SCEPHO)
Ligue des électeurs
Journalistes en danger
Association des femmes magistrats (AFNAC)
Association africaine de défense des droits de l'homme (ASADHO)

International non-governmental organizations

Amnesty International
Human Rights Watch
International Crisis Group

Notes

[a] Some were not interviewed, but submitted or passed on reports, communiqués or other documents.

Annex V

Other institutions, churches, judges, public organizations, non-governmental organizations and political parties met in territory controlled by the authorities of the Rassemblement congolais pour la démocratie

There are no political parties.

For security reasons, the non-governmental organizations in the provinces of North Kivu and South Kivu that contacted the Special Rapporteur are not listed.

Annex VI

Places visited by the Special Rapporteur

In Government-controlled territory

February visit

Prisons

Kinshasa (formerly Makala) Prison and Rehabilitation Centre
Kasapa Prison and Rehabilitation Centre (Lubumbashi)
National Information Agency prison (Lubumbashi)
Litho-Moboti Group building in Kinshasa (under the supervision of the Special Presidential Security Group)

Centres holding persons deprived of their liberty owing to the risks they face as members of ethnic groups considered as enemies by the people

National Social Security Institute in Kinshasa
Former convent Batika in Lubumbashi

Camps for persons displaced by war

Former Kamalondo Home for the Blind in Lubumbashi

August-September visit

Cachot of the Military Court Prosecutor
Cachot of the National Information Agency prison (ANR/3Z)

In territory controlled by the authorities of the Rassemblement congolais pour la démocratie

February visit

Goma Central Prison
Military Intelligence Service detention centre (Bureau 2)

August-September visit

Bukavu Central Prison

Annex VII

International instruments to which the Democratic Republic of the Congo is a party

International Covenant on Economic, Social and Cultural Rights
International Covenant on Civil and Political Rights
International Convention on the Elimination of All Forms of Racial Discrimination
International Convention on the Suppression and Punishment of the Crime of Apartheid
Convention on the Prevention and Punishment of the Crime of Genocide
Convention on the Rights of the Child
Convention on the Elimination of All Forms of Discrimination against Women
Convention on the Political Rights of Women
Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery
Convention relating to the Status of Refugees and Protocol relating to the Status of Refugees
Geneva Conventions of 1949

Annex VIII

Irregular armed groups directly or indirectly involved in the armed conflict in the Democratic Republic of the Congo

1. Rassemblement congolais pour la démocratie (RCD)
2. Former Rwandan Armed Forces (ex-FAR)*
3. *Interahamwe**
4. Mouvement de libération du Congo (MLC)
5. National Union for the Total Independence of Angola (UNITA)*
6. Mai-Mai of South Kivu
7. Mai-Mai of North Kivu
8. Front pour la défense de la démocratie (FDD)*
9. Lord's Resistance Army
10. Sudan People's Liberation Army (SPLA)
11. Simba Brigade
12. Union des nationalistes républicains pour la libération (UNAREL)
13. Mouvement pour la sécurité, la paix et le développement (MSPD)
14. Former Ugandan National Army (FUNA)*
15. West Nile Bank Front (WNBF)*
16. National Army for the Liberation of Uganda (NALU)*
17. Allied Democratic Forces (ADF)*

* Armed groups mentioned in the Lusaka peace agreements.

Annex IX

Armed conflicts developing in the territory of the Democratic Republic of the Congo[a]

Government of the Democratic Republic of the Congo/Rassemblement congolais pour la démocratie and Mouvement de libération du Congo
Government of Rwanda/former Rwandan Armed Forces and *Interahamwe*
Government of Uganda/various armed opposition groups
Government of the Sudan/various armed opposition groups
Government of Burundi/Front pour la défense de la démocratie
Government of Angola/National Union for the Total Independence of Angola and Cabinda
Government of the Republic of the Congo/various armed opposition groups
Government of Rwanda/Government of Uganda

Notes

[a] Without prejudice to other inter-ethnic armed conflicts that have not attracted the attention of the international community or been the subject of a national debate, such as the conflict that broke out in June 1999 in Irungu and Djugu territories in Orientale province, between the Bahema and the Balendu, who had coexisted peacefully until then and had succeeded in reaching agreement on the distribution of land

Annex X

Main peace initiatives undertaken by the international community since the outbreak of the conflict

1998

8 August: Victoria I (Zimbabwe)
18 August: Victoria II (Zimbabwe)
22 August: Pretoria (South Africa)
2 September: Durban (South Africa)
11 September: Addis Ababa (Ethiopia)
14 September: Grande Baie (Mauritius)
14 September: Visits by the Presidents of Zambia, Rwanda and Uganda
18 October: Nairobi (Kenya)
28 October: Lusaka (Zambia)
20 November: Paris (France), Franco-African Summit
8 December: Lusaka (Zambia)
18 December: Burkina Faso, conference of the Organization of African Unity
28 December: Lusaka (Zambia)

1999

16 January: Lusaka (Zambia)
18 January: Windhoek (Namibia)
February: Bilateral consultations between various African leaders
28 February: Mission by a representative of the United States to the region
6 March: Pretoria (South Africa)
23 March: Addis Ababa (Ethiopia)
Late March: Kinshasa, visit by the President of Zambia
9 April: Security Council resolution 1234 (1999), appointment of a Special Envoy of the Secretary-General for the peace process in the Democratic Republic of the Congo
17 April: Lusaka (Zambia)
19 April: Sirte (Libyan Arab Jamahiriya)
5 May: Dodoma (United Republic of Tanzania)
15 May: Sirte (Libyan Arab Jamahiriya)
28 May: Kampala (Uganda)
17 June: Pretoria (South Africa)
10 July: Signing of the Lusaka Peace Agreements by the Democratic Republic of the Congo, Rwanda, Uganda, Zimbabwe, Namibia and Angola
1 August: Signing of the Lusaka Agreements by the Mouvement de libération du Congo
31 August: Signing of the Lusaka Agreements by the 50 founding members of the Rassemblement congolais pour la démocratie